

ORIGINAL

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ENDORSED
FILED
ALAMEDA COUNTY

JAN 29 2007

CLERK OF THE SUPERIOR COURT
By HOLLIE M. ADAMIC
Deputy

9 Attorneys for Respondents the Superintendent of
10 Public Instruction, Department of Education, State
Board of Education, and State of California

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF ALAMEDA

15 **Coordination Proceeding Special Title (Rule
16 1550(b))**

Judicial Council Coordination
Proceeding No. 4468

17 **CALIFORNIA HIGH SCHOOL EXIT EXAM
18 CASES**

20 This document relates to:

21 **LILIANA VALENZUELA, et al., each individually
22 and on behalf of plaintiffs and all others similarly
situated,**

Petitioners,

23 v.

24 **JACK O' CONNELL, in his official capacity as
25 Superintendent of Public Instruction in California,
et al.,**

26 Respondents.

Superior Court of California
County of Alameda
Case No. RG06288707

**STIPULATION RE NOTICE
TO DISTRICTS AND CERTAIN
FORMER MEMBERS OF THE
CLASS OF 2006 RE:
REMEDICATION
OPPORTUNITIES; ORDER**

Date: January 26, 2007
Time: 3:00 p.m.
Dept: 20
Judge: Robert Freedman
Trial Date: N/A
Action Filed: February 8, 2006

1 The California Department of Education (CDE), the Superintendent of Public Instruction
2 (SPI), and the State Board of Education (SBE) (collectively, respondents), and the named
3 petitioners in the above-captioned case (collectively, the Parties) stipulate and agree as follows:

4 **Background**

5 1. On or about February 8, 2006, petitioners filed this lawsuit in superior court.
6 Petitioners contended that denial of a diploma and the right to graduate due to their failure to
7 pass one or both sections of the CAHSEE, as required by Education Code section 60851, would,
8 among other things, violate equal protection and due process because of inequalities in access to
9 educational resources. Respondents deny these allegations.

10 2. On May 12, 2006, this Court granted petitioners' motion for preliminary injunction,
11 thereby enjoining state respondents from denying diplomas to students in the class of 2006 who
12 had not passed one or both sections of the CAHSEE. This Court explained that "[t]here is
13 evidence in the record that shows that students in economically challenged communities have not
14 had an equal opportunity to learn the materials tested on the CAHSEE, that some schools have
15 yet to fully align their curriculums to the State's content standards, and that demonstrates that the
16 negative effects of scarcity of resources continue to fall disproportionately on English language
17 learners, particularly with respect to the shortage of teachers who are qualified to teach these
18 students."

19 3. On August 11, 2006, the court of appeal reversed this Court's injunction on the ground
20 that petitioners had not demonstrated that the interim harms favored their position, and that the
21 relief sought by petitioners (issuance of diplomas) was unavailable as a matter of law. However,
22 the court of appeal also said: "Given the standard of review and our normal deference to trial
23 court findings of fact, we accept the trial court's conclusion that plaintiffs established a
24 likelihood of success on the merits as to the denial of their fundamental right to equal educational
25 opportunity." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464-1465.)

26 4. It is estimated that over 10,000 former members of the Class of 2006 were denied
27 diplomas and the ability to graduate solely because of their inability to pass one or both sections
28 of the CAHSEE. A recent survey conducted by respondents in connection with this lawsuit

1 found that 2.85% of students in a sampling of districts (that represented 49% of total grade 12
2 enrollment during the last academic year) were denied diplomas and were unable to graduate
3 solely on this basis. Extrapolating from this statistic suggests that approximately 12,000 students
4 state-wide (i.e., 2.85% x 423,289 total enrollment) were denied diplomas solely on this basis.

5 **Access to Remediation for the Class of 2006**

6 5. The State provides funds to school districts for use in providing targeted instruction, or
7 remediation, in material tested by the CAHSEE, for the benefit of students who have not passed
8 one or both sections of the CAHSEE. (Ed. Code, § 37254.) The law is clear that school districts
9 may spend funds allocated for such purposes during the 2006-2007 fiscal year for the benefit of
10 members of the Class of 2006 who were unable to graduate as a result of their inability to pass
11 one or both parts of the CAHSEE. (*Id.*, § 37252, subd. (c).)

12 6. A recent survey conducted by respondents in connection with this lawsuit found that
13 159 (i.e., 78.7%) of the 202 responding districts had decided to allow former members of the
14 Class of 2006 to participate in targeted CAHSEE remediation as provided in section 37254
15 during the current academic year, and that 149 (i.e., 93.7%) of those districts had notified those
16 students that they would be allowed to participate in this specific type of program.

17 7. Petitioners are concerned that some districts are not permitting former members of the
18 Class of 2006 to participate in targeted CAHSEE remediation and/or that such students may not
19 be aware of remediation that may be available to them. Respondents contend that available
20 resources are adequate to serve those students who want to continue to learn the material tested
21 by the CAHSEE, including but not limited to targeted CAHSEE remediation programs available
22 at comprehensive high schools as provided in section 37254; enrollment in adult and
23 continuation schools; and enrollment in community colleges.

24 **Notice to Districts, Class of 2006**

25 8. CDE agrees to undertake the following steps as requested by petitioners.

26 9. CDE and/or the SPI agrees to send a letter, no later than January 31, 2007, to all
27 districts that shall: (1) explain how important it is for school districts to continue to reach out
28 and serve former members of the Class of 2006 who were unable to graduate solely as a result of

1 not passing one or both sections of the exam; (2) remind them of the availability of CAHSEE
2 remediation funds for the benefit of such students; and (3) request that such districts immediately
3 notify all such students of the availability of remediation programs offered by the district. While
4 the wording of this letter shall be subject to CDE's sole discretion, CDE shall solicit petitioners'
5 input and attempt in good faith to address any concerns expressed by petitioners. Petitioners
6 agree to provide such input within one business day of receiving any draft.

7 10. All school districts in California are strongly encouraged to comply with this request.

8 11. CDE also agrees to contact telephonically 30 districts that petitioners have separately
9 identified by email on or about January 22, 2007 to CDE's counsel. In these telephone calls,
10 CDE will (a) draw the districts' attention to the letter described above in paragraph 9; (b)
11 encourage the districts to offer remediation to the Class of 2006 as described in the letter; and (c)
12 ask the districts for current information regarding (i) existing opportunities for students in the
13 Class of 2006 to continue to learn the material taught by the CAHSEE, whether by CAHSEE-
14 targeted remediation programs or other means and (ii) any efforts to notify members of the Class
15 of 2006 regarding options available to them this academic year to continue to learn the material
16 taught by the CAHSEE. CDE will provide petitioners' counsel with a written summary of the
17 contents of these telephone calls by February 16, 2007.

18 12. In consideration of respondents' voluntary agreement to contact districts and follow up
19 with certain districts as described above, petitioners shall not seek further relief for the current
20 (2006-2007) academic year for former members of the Class of 2006 who have not passed the
21 CAHSEE from respondents or any state entity. This Stipulation and Order is without prejudice
22 to any rights petitioners, or any other former member of the Class of 2006, may have to seek
23 relief from a school district.

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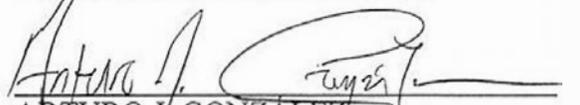
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1 13. Except as provided in Paragraph 12, this Stipulation and Order shall be without
2 prejudice to any argument, claim, or defense in this or any other action or proceeding, and shall
3 not be deemed to have adjudicated any issue of fact or law in this or any other proceeding. This
4 Stipulation and Order shall have no collateral estoppel effect.

5 So stipulated.

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7
8 Dated 1/29/07

MORRISON & FOERSTER LLP


ARTURO J. GONZALEZ
For: Plaintiffs and Petitioners, individually
and on behalf of all others similarly situated

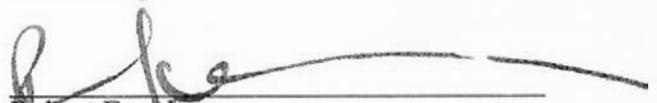
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For: Defendant and Respondents
Superintendent of Public Instruction,
California Department of Education, and
California State Board of Education

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22 The Court approves this Stipulation. The Parties are ordered to comply with its terms.

23 Dated: January 29, 2007

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Robert Freedman
Judge of the Superior Court

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28 Stipulation and Order, *Cal. High School Exam Cases (Valenzuela)*, JCCP No. 4468